

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA )  
v. )  
VON SCOTT LINDAHL, )  
Defendant. )  
Crim. No. 10-CR-571 (GLS)

**GOVERNMENT'S REQUEST FOR JURY  
DETERMINATION OF FORFEITURE  
AND REQUESTED JURY INSTRUCTIONS**

Pursuant to Federal Rule of Criminal Procedure 32.2(b)(5), the United States requests that the jury be retained to determine the forfeitability of specific property if it returns a guilty verdict, and submits the government's jury instructions and special verdict form listing each property subject to forfeiture and asking the jury to determine whether the government has established the requisite nexus between the property and the offense committed by the defendant.

Respectfully submitted,

RICHARD S. HARTUNIAN,  
United States Attorney  
Northern District of New York

By: /S/  
Tina E. Sciocchetti  
Assistant U.S. Attorney

Dated: May 24, 2011

**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 1**  
**(Jury's duty regarding forfeiture)**

Ladies and Gentlemen of the Jury at this stage of the proceedings there is one additional duty that you must carry out as part of your responsibility as jurors. This will require that you retire to the jury room once again to deliberate and consider a special verdict (which will be handed to you in a few moments by the clerk).

The law provides that when, as here, a defendant is convicted of being prohibited person in possession of a firearm, he is required to forfeit to the United States the firearms involved in the commission of the offense. The term "forfeit" simply means for someone to be divested or deprived of the ownership of something as a part of the punishment allowed by the law for the commission of certain criminal offenses. In this case, because you have rendered a guilty verdict as to the one count Indictment, you must now decide whether the government has established a nexus, that is a connection, between certain property and that offense.

In your consideration of the forfeiture claim of the Indictment, you are instructed that your previous finding that the defendant is guilty of having committed the offenses charged in the Indictment is final, conclusive, and binding. In your forfeiture deliberations, I direct you not to again discuss whether the defendant is guilty or not guilty of the violation charged in the Indictment.

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Fed.R.Crim.P. 32.2(b)(5).

**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 2**  
**(Forfeiture Allegations and Properties to be Forfeited)**

Under federal law, any person who is convicted as an prohibited person in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), shall forfeit to the United States pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), any firearms used or involved in the commission of the offense. As set forth in the indictment, the government alleges that the following properties are subject to forfeiture to the United States:

1. **One Puma/Rossi, model M92, .357 caliber rifle (serial no. 357-464);**
2. **One Jin An, model SPM-410, .410 caliber shotgun (serial no. 9001371); and**
3. **One Marlin, model 75, .22 caliber rifle (serial no. 25335574)**

**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 3**  
**(Burden of Proof as to Forfeiture)**

All of my previous instructions regarding direct and circumstantial evidence, credibility of witnesses, your duty to deliberate, and the necessity of a unanimous verdict, apply during your supplemental deliberations concerning the special verdict on the forfeiture claims.

However, my previous instructions on the government's burden of proof regarding your verdicts on the guilt of the defendant do not apply to your deliberations and verdict regarding forfeiture. In deliberating and deciding your verdict regarding forfeiture, I instruct you that the government need only prove by a preponderance of the evidence that property is subject to forfeiture under the applicable laws. The government is not required to prove this beyond a reasonable doubt.

I instruct you that, in order for the government to establish by a preponderance of the evidence that property is subject to forfeiture, it must prove that it is more likely than not that this is so. In other words, "preponderance of the evidence" means that the government's evidence, when considered and compared with that opposed to it, has more convincing force and produces in your minds belief that the property is subject to forfeiture under the applicable laws. Your job is to determine whether it is more likely than not that the property is such property.

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*Libretti v. United States*, 116 S.Ct. 356, 363 (1995); *United States v. Keene*, 341 F.3d 78, 85-86 (1st Cir. 2003) (preponderance standard applies to criminal forfeiture).

**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 4**  
**(Evidence to be Considered)**

While deliberating, you may consider any evidence, including testimony, offered by the parties at any time during this trial.

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United States v. Bornfield, 145 F.3d 1123, 1134 (10<sup>th</sup> Cir. 1998) (quoting jury instruction that while deliberating on forfeiture "you may consider any evidence offered by the parties before your previous deliberations").

**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 5  
(Court to Decide Certain Issues)**

Your duty at this phase of the proceeding is to determine whether certain properties are subject to forfeiture. You should not consider what might happen to the property in determining whether the property is subject to forfeiture; the disposition of any property that is declared forfeited is exclusively a matter for the Court to decide.

Further, certain of the properties that the government claims are subject to forfeiture may be in the name of the defendant and persons other than the defendant. However, any interest that a person other than the defendant may claim to such property will be taken into account by this Court in a separate proceeding. Interests of persons or entities other than the defendant are not for your consideration. Your sole task is to decide whether the properties I have described to you, regardless of in whose name they are now held, are subject to forfeiture under the laws I have set forth.

**UNITED STATES' PROPOSED FORFEITURE INSTRUCTION NO. 6  
(Special Verdict Form)**

The Special Verdict Form I have prepared asks you to decide which firearms, if any, were involved in the violation charged in the Indictment. You must unanimously agree on the answer regarding each firearm. You should record any unanimous decision by placing a check mark in the appropriate place on the form, next to the description of the firearm.

Once completed, the foreperson must then sign and date the Special Verdict Form.

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## **SPECIAL VERDICT**

We, the jury, respond to the Court's Special Verdict Form question as follows:

A checkmark indicates which firearm(s) we find were involved in the offense charged in the Indictment:

- One Puma/Rossi, model M92, .357 caliber rifle (serial no. 357-464)**  
**One Jin An, model SPM-410, .410 caliber shotgun (serial no. 9001371)**  
**One Marlin, model 75, .22 caliber rifle (serial no. 25335574)**

## So, Say We All,

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## FOREPERSON